

Appln. No.: 10/528,057
Amendment dated February 27, 2009
Reply to Office Action of November 6, 2008

Amendments to the Drawings:

Please replace Figs. 1-3 with the attached Replacement Sheets. No amendments have been made to the figures.

Attachment: Replacement Sheets (3 sheets)

REMARKS/ARGUMENTS

The Office Action of November 6, 2008 has been carefully reviewed and these remarks are responsive thereto. Claims 15 and 24 have been canceled in the present paper. Claims 2, 16 were previously canceled without prejudice or disclaimer. No new matter has been added. Claims 1, 3-14, 17-23, and 25-29 are pending upon entry of the present paper. Reconsideration and allowance of the instant application are respectfully requested.

Telephone Interview

Applicants wish to thank Examiner Kim for the courtesies extended to the undersigned during a telephone interview on February 17, 2009. The following remarks include Applicants' substance of interview pursuant to MPEP § 713.04.

Objections to the Drawings

The drawings stand objected to as being of poor quality and failing to comply with 37 C.F.R. § 1.121(d). Applicants present Replacement Drawing Sheets in compliance with 37 C.F.R. § 1.121(d) herein. No new matter has been added.

Rejections under 35 U.S.C. § 101

Claim 29 stands rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. This rejection is traversed below.

Amended claim 29 is directed to a computer-readable medium. As discussed and generally agreed to during the interview, support for the amended features, and more specifically, the recitation of a computer-readable medium can be found in the originally-filed specification when read as a whole, and in particular, at, for example, page 2, lines 9-17.¹ Accordingly, claim 29 is not directed to a computer program per se. See the Office Action at page 4. As such, Applicants respectfully request withdrawal of the section 101 rejection.

¹ The cited passage of the specification provides illustrative, non-limiting support in that a memory (device) is loaded with (portions) of software code (e.g., instructions) for performing steps of a method when run (e.g., executed) on a computer.

Rejections under 35 U.S.C. § 103

Claims 1, 8-9, 14-15, 23-24 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. publication no. 2002/0085540 A1 to Hyvarinen et al. ("Hyvarinen") in view of U.S. publication no. 2003/0126263 A1 to Fenton et al. ("Fenton"). Claims 3-6 and 17-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Hyvarinen and Fenton and further in view of U.S. patent no. 6,044,091 to "Kim". Claims 7 and 21-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Hyvarinen, Fenton and Kim and further in view of U.S. publication no. 2002/0160757 A1 to Shavit et al. ("Shavit"). Claims 10-13 and 25-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Hyvarinen and Fenton and further in view of U.S. patent no. 7,283,550 B2 to Duncan et al. ("Duncan"). Applicants respectfully traverse these rejections.

Amended independent claim 1 recites, among other features, "verifying the availability for the provision of the requested telecommunication service of at least a first and a second system of the plurality, the first telecommunication system forming with respect to the second telecommunication system a resource to be exploited in a preferential way, and *exploiting the resource in the preferential way by selecting, in an automatic and dynamic way, at least one between the first and the second system of the plurality for the provision of the requested telecommunication service by subdividing the telecommunication services into a first set of telecommunication services to be substantially provided through the second telecommunication system, and a second set of telecommunication services to be provided through the first telecommunication system and the second telecommunication system.*"

As discussed during the interview, the Office Action at page 6 correctly indicates that Hyvarinen fails to disclose features related to subdividing telecommunication services into a first set of telecommunication services to be substantially provided through a second telecommunication system, and a second set of telecommunication services to be provided through a first telecommunication system and the second telecommunication system, much less performing the subdivision so as to exploit a resource (which is formed from the first and second telecommunication systems) in a preferential way as recited in amended claim 1.

Prior to the amendment to claim 1, the Office relied on Fenton at paragraph [0002] to allegedly disclose the above-noted features related to subdividing telecommunication services into a first set of telecommunication services to be substantially provided through a second telecommunication system, and a second set of telecommunication services to be provided through a first telecommunication system and the second telecommunication system. See the Office Action at pages 2-3 ("Response to Arguments") and pages 6-7.

As discussed, Fenton at paragraph [0002] merely describes the use of short messaging service (SMS) in the Global System for Mobile Communications (GSM) second generation system (2G) and the development of non-real time multimedia message service (MMS) for third generation (3G) mobile systems. Even assuming (without admitting) that SMS and voice services may appropriately be analogized to the recited second set of telecommunication services and that the MMS services may appropriately be analogized to the recited first set of telecommunication services, that alleged subdivision of telecommunication services is not conducted to exploit the resource (the recited formation of the first and second telecommunication systems) in a preferential way as recited in amended claim 1. Instead, as discussed during the interview, and as discussed in the Office Action at page 2 ("Response to Arguments"), that alleged subdivision is merely based on MMS services only working in 3G networks, and as such, Fenton fails to disclose (nor would there be any apparent reason to disclose in Fenton) features related to exploiting a resource in a preferential way by selecting, in an automatic and dynamic way, at least one between a first and a second system of a plurality for the provision of a requested telecommunication service by subdividing the telecommunication services into a first set of telecommunication services to be substantially provided through the second telecommunication system, and a second set of telecommunication services to be provided through the first telecommunication system and the second telecommunication system as recited in claim 1.

As discussed during the interview, the remainder of Fenton fails to remedy the deficiencies of paragraph [0002] of Fenton. In fact, the remainder of Fenton teaches away from the above-noted features recited in amended claim 1. As discussed at page 21 of Applicants' "Second Amendment" dated July 8, 2008, Fenton describes that when a multimedia message is

received at a load balancer for a network, a multimedia service relay is selected to process the multimedia message based on load balancing, and not on the basis of the type of multimedia message to be processed. Indeed, Fenton at paragraph [0021] describes load balancer 102 as segmenting a workload within a network 118 and providing a high availability system by maximizing resource allocation and resource utilization. Furthermore, Fenton at paragraph [0021] continues that load balancer 102 is identified by a single address such that one or more external networks are mapped to network 118 through a single virtual address of load balancer 102. Fenton avoids a subdivision of telecommunication services into a first set of telecommunication services to be substantially provided through the second telecommunication system, and a second set of telecommunication services to be provided through the first telecommunication system and the second telecommunication system, to exploit the resource in a preferential way. See Fenton at paragraph [0005] (describing inefficiencies associated with a (one-to-one) mapping (e.g., subdivision) of multimedia service relays and multimedia service servers). Accordingly, in Fenton, all of the telecommunication services (e.g., all of the different types and formats of messages described in Fenton at paragraph [0006]) are treated similarly by load balancer 102 to achieve dynamic load balancing irrespective of the type of message data (e.g., telecommunication services) to be conveyed between internal network 118 and external networks 120. As such, Fenton teaches away from the above-noted features recited in claim 1.

Claim 1 is allowable for at least the foregoing reasons (notwithstanding whether a combination of Hyvarinen and Fenton is proper).

Amended independent claims 14 and 29 recite features similar to those described above with respect to claim 1. Claims 14 and 29 are allowable for at least reasons substantially similar to those discussed above with respect to claim 1.

The dependent claims are allowable for at least the same reasons as their respective base claims because none of the additional applied references (e.g., Kim, Shavit, and Duncan), taken alone or in any combination with Hyvarinen and/or Fenton, fail to cure the deficiencies of Hyvarinen and Fenton discussed above (notwithstanding whether any such combination of the applied references is proper).

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CONCLUSION

If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly.

All rejections having been addressed, applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same.

Respectfully submitted,
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Dated: February 27, 2009

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